

# **EXHIBIT 5**

**AFFIDAVIT OF JAMES CODDINGTON**

**STATE OF OKLAHOMA**           )  
  )  
**COUNTY OF PITTSBURG**       )       ss.

Before me, the undersigned Notary, on this 19<sup>th</sup> day of August, 2021, personally appeared James Coddington, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I am a death-row inmate at Oklahoma State Penitentiary. My DOC Number is 194169.
2. I am one of the Plaintiffs in the lethal injection case, *Glossip v. Chandler*, Western District of Oklahoma Case Number CIV-14-0665-F.
3. In July of 2020, my appointed federal habeas lawyers were not involved in the lethal injection lawsuit. Other lawyers were talking with me about the lethal injection case.
4. On May 3, 2021, I had a telephone call with Michael Lieberman. I understood he was an Assistant Federal Public Defender in the Capital Habeas Unit of the Federal Public Defender's Office for the Western District of Oklahoma and was one of the lawyers in the lethal injection lawsuit. I understood since I didn't want to be executed by lethal injection, I needed to pick a different way to be executed. During the phone call, I told Mr. Lieberman I chose the firing squad.
5. I got a letter with a three page form from Angie Beery, a Paralegal in the Oklahoma Capital Habeas Unit. The letter was dated May 26, 2021, but I don't remember when I got it. Ms. Beery asked me to return the form as soon as possible. The last two pages of the form included several different methods of execution. It also had a choice that allowed me to say I didn't want to pick a different method for moral, ethical and/or religious reasons. In my mind, I had already chosen firing squad. I didn't want to pick anything else, so I put my initials by the choice that said I didn't want to pick a different method. I signed the form and mailed it back to Ms. Beery.
6. On June 24, 2021, the Oklahoma Capital Habeas Unit was appointed to represent me in my clemency proceedings in *Coddington v. Sharp*, Western District of Oklahoma Case Number CIV-11-1457-HE. On June 28, 2021, Emma Rolls, Assistant Federal Public Defender, entered her appearance and let me know she was going to be on my clemency.

JC

7. During a telephone call with Ms. Rolls on August 12, 2021, she told me judgment had been entered against me in *Glossip v. Chandler*. She told me judgment was entered against me because I had not selected an alternative method of execution. I told her I had chosen the firing squad and about the telephone call with Mr. Lieberman.
8. During a telephone call with Ms. Rolls on August 13, 2021, she told me she found an email dated May 3, 2021, from Mr. Lieberman to some of the lawyers working on *Glossip v. Chandler*. The e-mail included "James Coddington – firing squad."
9. After the May 3, 2021 phone call, I believed I had selected death by firing squad instead of lethal injection. I never changed my mind about that and I did not intend to take my decision back.

FURTHER AFFIANT SAYETH NOT.

  
James Coddington

Subscribed and sworn to me this 19<sup>th</sup> day of August, 2021.



  
NOTARY PUBLIC

My commission number is:

05008474

My commission expires:

9/12/21

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**From:** Michael Lieberman  
**Sent:** Monday, May 3, 2021 4:38 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: Glossip

I have now completed legal calls with all plaintiffs who declined to meet with [REDACTED] last week, [REDACTED]. Although the case manager at OSP initially agreed to scan and email to me all the [REDACTED] answers from those I spoke with today, [REDACTED] just stepped in and instructed them not to do that. I will forward his email momentarily. We will have to wait for the documents to arrive in the mail.

Here is a summary of where we are:

James Coddington -- firing squad

[REDACTED]

I will defer to you all how to convey this information in the best format to both the State and the court. We stand ready to file and serve whatever is necessary.

Mike

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**Plaintiff's Initials      Alternative Pled (Compl. ¶ 114)**

Execution by a single dose of FDA-approved pentobarbital or sodium pentothal (thiopental) as provided by Charts A and B of the Execution Protocol as described fully in Plaintiffs' Third Amended Complaint paragraph 114(a).<sup>1</sup>

Execution by a single dose of compounded pentobarbital or sodium pentothal (thiopental) as described fully in Plaintiffs' Third Amended Complaint paragraph 114(b).

Execution by a single dose of 40 milligrams of FDA-approved midazolam and potassium chloride, as described fully in Plaintiffs' Third Amended Complaint paragraph 114(c).

Execution by firing squad as described fully in Plaintiffs' Third Amended Complaint paragraph 114(d).

JC  
8-19-2021

**Interrogatory No. 16:** Identify where and from whom the State of Oklahoma can obtain pentobarbital or sodium pentothal for use in an execution to be held within the State, as pled in ¶ 114 of your Complaint.

**Supplemental Response:** Subject to foregoing objections, Plaintiffs respond as follows:

The State of Oklahoma has at least five alternative potential sources for pentobarbital: (1) synthesis by a properly licensed chemistry lab; (2) Defendants' technical expert Dr. Buffington who testified that he is aware of a source or sources; (3) the source(s) for the numerous other states that carry out executions using pentobarbital; (4) the source(s) for the federal government, which has recently carried out 13 executions using pentobarbital; or (5) one of the more than 900 pharmacies licensed by the State of Oklahoma and not contacted by the ODOC in an effort to find pentobarbital.

<sup>1</sup> Relevant excerpts of Plaintiffs' Third Amended Complaint are attached hereto as Exhibit A.

JC

I, James Coddington, declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. As to those facts not known personally to me, I have relied on the sources cited above.

8-19-2021  
Date

James Coddington  
Signature